

726.7004

726.7004 Determination to use other than full and open competition.

The determinations required in order to use the authority under 706.302-71 for other than full and open competition shall be made by the contracting officer in consultation with the Director of OSDBU. In the event of a disagreement between the contracting officer and the Director of OSDBU, the head of the contracting activity shall make the final determination.

[55 FR 8470, Mar. 8, 1990. Redesignated at 61 FR 39093, July 26, 1996.]

726.7005 Exceptions.

The notification requirement in 705.207 and the subcontracting requirement in 726.7007 are based on statutory requirement and may not be deviated from under the provisions of subpart 701.4. By statute, the Administrator or designee may determine that these requirements do not apply to a particular contract or category of contracts. The M/OAA Director has been designated to make such determinations. One such determination concerning subcontracting is set out in 726.7007.

[58 FR 8702, Feb. 17, 1993. Redesignated at 61 FR 39093, July 26, 1996, as amended at 62 FR 40468, July 29, 1997; 64 FR 42040, Aug. 3, 1999; 72 FR 19670, Apr. 19, 2007]

726.7006 Determination of status as a disadvantaged enterprise.

(a) To be eligible for an award under AIDAR 706.302-71 providing for other than full and open competition, the contractor must qualify, as of both the date of submission of its offer and the date of contract award, as a small disadvantaged business (as defined in 726.7002), an historically black college or university, a college or university in which more than 40 percent of the students are Hispanic Americans, or a private voluntary organization controlled by individuals who are socially and economically disadvantaged. The contracting officer shall insert the provision at 752.226-1 in any solicitation or contract to be awarded under the provisions of 706.302-71.

(b) The contracting officer shall accept an offeror's representations and certifications under the provisions referenced above that it is a small dis-

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advantaged business unless he or she determines otherwise based on information contained in a challenge of the offeror's status by the Small Business Administration or another offeror, or otherwise available to the contracting officer.

[55 FR 8470, Mar. 8, 1990, as amended at 56 FR 27209, June 13, 1991. Redesignated at 61 FR 39093, July 26, 1996, as amended at 62 FR 40468, July 29, 1997]

726.7007 Requirement for subcontracting with disadvantaged enterprises.

(a) In addition to the requirements in FAR subpart 19.7, any new contract or modification which constitutes new procurement (except for a contract or modification with a disadvantaged enterprise as defined in 726.7002) with respect to which more than \$500,000 is to be funded with amounts made available for development assistance or from the appropriations cited in section 706.302-71(a)(1) shall contain a provision requiring that not less than ten percent of the dollar value of the contract must be subcontracted to disadvantaged enterprises, including disadvantaged enterprises which are not small.

(b) This requirement does not apply when the contracting officer, with the concurrence of the Director of OSDBU, certifies there is no realistic expectation of U.S. subcontracting opportunities and so documents the file. If the contracting officer and the Director of OSDBU do not agree, the determination will be made by the head of the contracting activity. See 726.7005 for guidance on other potential exceptions.

(c) The contracting officer shall insert the clause in 752.226-2 in any solicitation or contract as provided in paragraph (a) of this section, unless exempted in accordance with the provisions of paragraph (b) of this section.

[55 FR 8470, Mar. 8, 1990, as amended at 56 FR 27209, June 13, 1991; 56 FR 52213, Oct. 18, 1991; 58 FR 42255, Aug. 9, 1993. Redesignated at 61 FR 39093, July 26, 1996, as amended at 62 FR 40468, July 29, 1997; 62 FR 47532, Sept. 9, 1997]

726.7008 Limitations on subcontracting.

The contracting officer shall insert the clause at 752.226-3, Limitations on Subcontracting, in any solicitation and